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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

LAITH ELAIMY; ABIR ELAIMY,
a/k/a ABEER ELAIMY; FEDERAL
NATIONAL MORTGAGE
ASSOCIATION; and WASHINGTON
TRUST BANK;

Defendants.

Case No. C18-216

**FIRST AMENDED
COMPLAINT**

The United States of America complains and alleges as follows:

1 1. This is a civil action brought by the United States of America to
2 (1) reduce to judgment (solely against Laith Elaimy) the outstanding
3 federal tax liabilities and civil penalties that were assessed jointly
4 against Laith and Abir/Abeer Elaimy, formerly husband and wife, and
5 (2) foreclose federal tax liens on a parcel of property (the “subject
6 property,” more specifically described below).

7
8 **JURISDICTION AND VENUE**
9

10 2. This action is brought at the direction of the Attorney General of
11 the United States and at the request and with the authorization of the
12 Chief Counsel of the Internal Revenue Service (“IRS”), a delegate of the
13 Secretary of the Treasury, pursuant to 26 U.S.C. §§ 7401 and 7403.

14 3. The Court has jurisdiction over this action pursuant to 26 U.S.C.
15 §§ 7402 and 7403 and 28 U.S.C. §§ 1340 and 1345.
16

17 4. Venue is proper in the Eastern District of Washington under 28
18 U.S.C. §§ 1391(b)(1) & (2) because the subject property is located within
19 this judicial district, and the behavior giving rise to the tax liabilities
20 occurred in this judicial district. Moreover, upon information and belief,
21 both Laith Elaimy and Abir/Abeer Elaimy live in the Eastern District of
22 Washington.
23
24

DEFENDANTS

5. The United States realleges paragraphs 1 through 4 and reincorporates them herein.

6. Laith Elaimy currently lives in the Eastern District of Washington. He is made a party to this suit because he has unpaid federal tax assessments, filed notices of federal tax liens related to those assessments name him, and he has an ownership interest in the subject property.

7. Abir/Abeer Elaimy currently lives in the Eastern District of Washington. She is made a party to this suit because filed notices of federal tax liens related to the assessments described in the previous paragraph (which were made jointly against her) name her, and she has an ownership interest in the subject property. The United States acknowledges that her tax debts have been discharged in bankruptcy, but avers that the liens were not avoided by the bankruptcy.

8. Vickie Peckham d/b/a Top Drawer Cabinets was originally made a party to this suit pursuant to 26 U.S.C. § 7403(b), because she/it might have claimed an interest in the subject property. She has since

1 disclaimed an interest in the property and is no longer a defendant. (*See*
2 Dkt. No. 11.)

3 9. Federal National Mortgage Association (“Fannie Mae”) is made a
4 party to this suit pursuant to 26 U.S.C. § 7403(b), because it may claim
5 an interest in the subject property.
6

7 10. Spokane County was originally made a party to this suit
8 pursuant to 26 U.S.C. § 7403(b), because it might have claimed an
9 interest in the subject property. It has since disclaimed an interest in
10 the property and is no longer a defendant. (*See* Dkt. No. 11.)
11

12 11. Washington Trust Bank is made a party to this suit
13 pursuant to 26 U.S.C. § 7403(b), because it may claim an interest in the
14 subject property.
15

16 **THE SUBJECT PROPERTY**

17 12. The United States seeks foreclosure of federal tax liens
18 against the parcel of real property described below (otherwise referred
19 to as “the subject property”), identified as 8116 East Elde Dr., Spokane,
20 WA 99212. The legal description is as follows:
21

22 Lot 1, Block 4, Northwood Second Addition, according to plat
23 recorded in Volume 15 of Plats, Pages 41 and 42, in Spokane
24 County, Washington.

1 13. On November 16, 1990, a statutory warrant deed was
2 recorded in Spokane County (Vol. 1154 page 1658) in which M. Vincent
3 Searles and Kristy Searles transferred the subject property to Laith F.
4 and Abeer S. Elaimy, husband and wife. The deed states that the
5 property was transferred “in consideration of one dollar and other good
6 and valuable consideration.”
7

8 14. On February 24, 1993, a deed of trust was recorded securing
9 a note in the amount of \$160,000, originally payable to Community
10 West Mortgage, Inc. That deed has been subsequently assigned to other
11 entities several times, most recently to the Federal National Mortgage
12 Association (“Fannie Mae.”).
13

14 15. The deed of trust described in paragraph 14 is currently held
15 by Fannie Mae.
16

17 16. On August 11, 1999, a deed of trust was recorded in Spokane
18 County (instrument number 4401039), in which the borrowers—Abeer
19 S. Elaimy and Laith F. Elaimy—secured a loan of \$121,493.87 with the
20 subject property. The original lender was Washington Trust Bank, and
21 the original trustee was Spokane County Title.
22

23 17. Washington Trust Bank still holds that deed of trust.
24

18. On October 7, 1999, Vickie Peckham d/b/a Top Drawer Cabinets recorded a lien pursuant to RCW 60.04, against Laith Elaimy, secured by the subject property, in the amount of \$5,003.57.

19. On January 18, 2007, Abeer S. Elaimy filed an order changing her first name from “Abeer” to “Abir.”

TAX LIABILITIES, ONE TAXPAYER’S DISCHARGE, AND THE TOLLING OF THE COLLECTION STATUTE

20. The United States reasserts the allegations made in paragraphs 1 through 19, above, as set forth herein.

21. On the dates set forth below, a duly authorized delegate of the Secretary of the Treasury made assessments against Abeer Elaimy (a/k/a Abir Elaimy) and Laith Elaimy, jointly, as follows:

<u>Type of Tax</u>	<u>Tax Periods</u>	<u>Assessment Date</u>	<u>Assessment Amount</u> ¹	<u>Estimated Unpaid Balance as of June 27, 2018</u> ²
1040	1999	3-10-2003	T \$97,362.44	\$206,816.16
		3-10-2003	P1 \$19,791.55	
		3-10-2003	P2 \$15,393.43	
		3-10-2003	I \$24,209.63	

¹ T—tax assessed; F—fees and collection costs; P1—late return filing penalty, 26 U.S.C. §6651(a)(1); P2—failure to timely pay tax penalty, 26 U.S.C. §6651(a)(2) & (a)(3); P3—estimated tax penalty; P4—fraud penalty, § 6663; I—interest assessed, or reduced and removed previous interest credited; F—Fees and collection costs.

² Includes assessments and payments to date. Does not include accrued but unassessed interest and statutory additions.

		10-3-2005	P2	\$1,826.00	
		11-16-2015	I	\$91,332.25	
		11-14-2016	I	\$7,683.98	
		11-13-2017	I	\$7,979.60	
1040	2001	2-10-2003	T	\$132,924.00	\$37,678.13
		2-10-2003	P3	\$2,974.07	
		2-10-2003	P1	\$21,602.02	
		2-10-2003	P2	\$4,800.45	
		2-10-2003	I	\$5,826.49	
		9-1-2003	F	\$38.00	
		10-3-2005	P2	\$10,766.05	
		11-16-2015	I	\$75,754.38	
		11-14-2016	I	\$6,083.69	
		11-13-2017	I	\$4,593.32	
1040	2003	8-16-2004	T	\$61,805.78	\$80,599.97
		8-16-2004	P2	\$883.39	
		8-16-2004	I	\$552.62	
		8-8-2005	P2	\$3,533.58	
		8-7-2006	P2	\$4,240.29	
		10-23-2006	F	\$64.00	
		8-9-2010	P2	\$176.68	
		4-14-2014	F	\$110.00	
		11-16-2015	I	\$29,808.90	
		11-14-2016	I	\$2,744.10	
			I	\$3,150.63	
TOTAL					\$325,094.26

22. On or around March 1, 2007, Laith and Abir/Abeer Elaimy submitted an offer in compromise, which was rejected by the IRS on August 6, 2008, 524 days later.

1 23. The IRS collection statute was tolled during the period
2 described in paragraph 20, plus an additional 30 days. 26 U.S.C. §§
3 6331(k)(1) & 6331(i)(5).
4

5 24. On or around February 26, 2009, Laith and Abir/Abeer
6 Elaimy submitted a second offer in compromise, which was rejected by
7 the IRS on November 2, 2009, 249 days later.

8 25. The IRS collection statute was tolled during the period
9 described in paragraph 22, plus an additional 30 days. 26 U.S.C. §§
10 6331(k)(1) & 6331(i)(5).
11

12 26. On or around May 20, 2011, Laith and Abir Elaimy filed for
13 relief under the bankruptcy code (E.D. Wash. Case No. 2:11-bk-2526).
14 That proceeding was dismissed without a discharge on or around
15 November 23, 2011, 187 days later.
16

17 27. The IRS collection statute was tolled during the period
18 described in paragraph 24, plus an additional six months. 26 U.S.C. §
19 6503(h).
20

21 28. On or around June 7, 2012, Laith and Abir Elaimy filed for
22 relief under the bankruptcy code (E.D. Wash. Case No. 2:12-bk-2603).
23 Laith Elaimy's discharge in that bankruptcy proceeding was denied on
24

1 February 26, 2014, 629 days later. On or around March 7, 2014, the
2 bankruptcy court granted Abir Elaimy a bankruptcy discharge.

3 29. The IRS collection statute was tolled during the two periods
4 described in paragraph 26, with each period being extended by an
5 additional six months. 26 U.S.C. § 6503(h). The United States' statute-
6 of-limitations calculations have been based off of the shorter of the two
7 periods (Laith Elaimy's period).
8

9 30. The period for collection of the assessments described in
10 paragraph 19, above, has not yet expired as to either Laith Elaimy or
11 Abir/Abeer Elaimy, and this action is not barred by 26 U.S.C. § 6502.
12

13 31. Laith Elaimy and Abir/Abeer Elaimy failed to pay in full the
14 above tax liabilities despite notice and demand for payment. Pursuant
15 to 26 U.S.C. § 6321, statutory liens arose against all property and rights
16 to property owned by Laith and Abir/Abeer Elaimy, including the
17 subject property, at the time of the tax assessments.
18

19 32. Despite timely notice and demand for payment of the
20 assessments described above, Laith Elaimy and Abir/Abeer Elaimy
21 neglected or refused to make payment to the United States, and there
22 remains due and owing on those assessments, together with accrued but
23
24

1 unassessed statutory interest and other additions, the amount of
2 \$325,094.26, as of June 27, 2018, plus statutory interest and accruals
3 after that date.
4

5 33. The IRS duly recorded notices of federal tax liens in Spokane
6 County, Washington, on August 27, 2003 (Doc. No. 4952132), October 3,
7 2006 (Doc. No. 5442629), October 30, 2012 (Doc. No. 6143524), and
8 March 24, 2014 (Doc. No. 6292404), for Laith and Abir/Abeer Elaimy's
9 1999, 2001, and 2003 individual income tax period debt.
10

11 **THE BANKRUPTCY AND ABIR/ABEER ELAIMY'S DISCHARGE**

12 34. The United States reasserts the allegations made in
13 paragraphs 1 through 33, above.
14

15 35. As noted above, Laith and Abir/Abeer Elaimy petitioned for
16 relief under the bankruptcy code (Chapter 7, specifically) on or around
17 June 7, 2012.

18 36. On February 26, 2014, the bankruptcy court denied Laith
19 Elaimy's request for a discharge.
20

21 37. On March 7, 2014, the bankruptcy court granted Abir/Abeer
22 Elaimy's petition for a discharge.
23
24

1 38. Accordingly, Laith Elaimy has not obtained a discharge of
2 the tax debts described in paragraph 19.

3 39. Even after obtaining a bankruptcy discharge of her personal
4 debts, the liens securing Abir/Abeer's tax debts that attached to her pre-
5 petition bankruptcy property survived the bankruptcy. Accordingly,
6 even post-discharge, the United States can collect on Abir/Abeer
7 Elaimy's pre-petition property to which tax liens attached.
8

9
10 **COUNTY I: REDUCE TO JUDGMENT FEDERAL TAX AND**
11 **PENALTY ASSESSMENTS AGAINST LAITH ELAIMY**

12 40. The United States reasserts the allegations made in
13 paragraphs 1 through 39, above.

14 41. On the dates, in the amounts, and for the tax periods set
15 forth in paragraph 19 above, a duly authorized delegate of the Secretary
16 of the Treasury made assessments against Defendants Laith and
17 Abir/Abeer Elaimy, jointly, for unpaid federal income taxes, penalties,
18 and interest.
19

20 42. Despite timely notice and demand for payment of the
21 assessments described above, Laith and Abir/Abeer Elaimy have
22 neglected, refused, or failed to pay the assessments and there remains
23 due and owing to the United States on those assessments (from Laith
24

1 Elaimy) the amount of \$325,094.26, as of June 27, 2018, plus statutory
2 interest and accruals after that date.

3 43. Abir/Abeer Elaimy has received a discharge in bankruptcy,
4 and the United States is not requesting a judgment against her for the
5 assessments described in paragraph 19.

7 44. Under 26 U.S.C. § 7402(a), the United States is entitled to a
8 judgment against Laith Elaimy for the unpaid balance of the assessed
9 amounts described above, plus statutory interest and any other
10 additions accruing to the date of payment.

12 **COUNT II: FIND THAT THE UNITED STATES' TAX LIENS**
13 **HAVE PRIORITY OVER SUBSEQUENTLY-RECORDED**
14 **INTERESTS**

15 45. The United States reasserts the allegations made in
16 paragraphs 1 through 44, above.

17 46. Any interests recorded after the IRS's notices of federal tax
18 liens, apart from those entitled to a superpriority under 26 U.S.C. §
19 6323, should have a lower priority than the IRS tax liens.

20 47. The United States is entitled to an order that the federal tax
21 liens have priority over all interests in the subject property acquired
22 after the attachment of the tax liens, subject to 26 U.S.C. § 6323.
23

**COUNT III: FORECLOSE FEDERAL TAX LIENS AGAINST THE
SUBJECT PROPERTY AND SELL THE PROPERTY TO
SATISFY, IN PART OR IN FULL, THE TAX LIENS AT ISSUE**

48. The United States realleges paragraphs 1 through 47 and reincorporates them herein.

49. Pursuant to 26 U.S.C. §§ 6321 and 6322, statutory liens for unpaid federal taxes arose in favor of the United States against all property and rights to property, whether real or personal, belonging to Laith Elaimy and Abir/Abeer Elaimy—including the subject property—as of the dates of assessments described in paragraph 19, above.

50. The federal tax liens under § 6321, described in the paragraph above, attached to Laith and Abir/Abeer Elaimy’s interests in the subject property sought to be foreclosed in this action, and remain on the subject property, despite any subsequent transfers.

51. Abir/Abeer Elaimy’s bankruptcy discharge did not void, release, or ameliorate the liens described in the foregoing paragraphs, and the United States can still foreclose those liens because even after a bankruptcy discharge, the subject property “remains liable for a debt secured by a valid lien, including a tax lien.” *In re Isom*, 901 F.2d 744, 745 (9th Cir. 1990).

1 52. Washington is a community property state, and the
2 assessments described in paragraph 19 were made during the existence
3 of the marital community.
4

5 53. Under 26 U.S.C. § 7403(c), the United States is entitled to a
6 decree of sale of the subject property to enforce its tax liens (arising out
7 of the tax debts of both Laith Elaimy and Abir/Abeer Elaimy, despite
8 the latter's bankruptcy discharge) thereon.
9

10 WHEREFORE the United States prays as follows:

- 11 a. That judgment be entered against defendant Laith Elaimy for
12 unpaid federal income taxes and penalties for the 1999, 2001, and
13 2003 tax years, in the amount of \$325,094.26, as of June 27, 2018,
14 plus statutory interest and accruals after that date.
15
- 16 b. That the Court determine that the United States has valid and
17 subsisting federal tax liens, pursuant to 26 U.S.C. § 6321 and
18 6322, on all property and rights to property of Laith Elaimy, both
19 real and personal, tangible and intangible, including the subject
20 property.
21
22
23
24

- 1 c. That the Court determine the merits and priority of any claim or
2 interest in the subject property asserted by the named
3 Defendants. *See* 26 U.S.C. § 6323.
4
5 d. That the Court order that the United States' tax liens (arising out
6 of the tax debts of both Laith Elaimy and Abir/Abeer Elaimy,
7 despite the latter's bankruptcy discharge) encumbering the
8 subject property be foreclosed; that the property be ordered sold
9 pursuant to applicable law; that the proceeds of the sale be
10 applied first to the costs of such sale and any outstanding real
11 property county taxes at the time of such sale and to any other
12 claimants with priority claims over the United States, and then to
13 the United States to satisfy its federal tax liens; and
14
15 e. That the United States be granted such other relief as the court
16 deems just and proper, including fees and costs as allowed by law.
17

18 Dated this 22 day of October, 2018.

19 RICHARD E. ZUCKERMAN
20 Principal Deputy Assistant Attorney
21 General

22 /s/ Dylan Cerling
23 DYLAN C. CERLING
24 Trial Attorney, Tax Division
U.S. Department of Justice

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Of Counsel:
Joseph H. Harrington
U.S. Attorney
E.D. Wash.

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of October, 2018, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will give automatic notice to the following parties:

Brant Stevens
222 W. Mission Ave., Ste. 25
Spokane, WA 99021
Attorney for Laith Elaimy and Abir Elaimy

Michael Farrell
Thomas Purcell
117 SW Taylor Street, Suite 200
Portland, OR 97204
Attorneys for Seterus, Inc. and Fannie Mae

/s/ Dylan C. Cerling
DYLAN C. CERLING
Trial Attorney
United States Department of Justice,
Tax Division

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff(s)
v.

Civil Action No.

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

 Date

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Date _____

Civil Action No. _____

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 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date_____
*Server's signature*_____
*Printed name and title*_____
Server's address

Additional information regarding attempted service, etc: